

Amy B. Vandeveld, SBN 137904
LAW OFFICES OF AMY B. VANDEVELD
1850 Fifth Avenue, Suite 22
San Diego, CA 92101
Telephone: (619) 231-8883
Facsimile: (619) 231-8329

Attorney for KAREL SPIKES

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KAREL SPIKES,

Plaintiff,

vs.

EUROPEAN CAR SERVICE; ANDREW
MACIEJEWSKI; ZENNON SMOCYNSKI and
DOES 1 THROUGH 10, Inclusive,

Defendants.

Case No.: 07 CV 2394 LAB
(WMc)

**DECLARATION OF AMY B.
VANDEVELD IN SUPPORT
OF PLAINTIFF'S
OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS**

[FRCP 12(B)(1)]

Date: April 14, 2008
Time: 11:15 a.m.
Courtroom: 9
Judge: The Honorable Larry A.
Burns

I, AMY B. VANDEVELD, declare:

1. I am not a party to this action. I am counsel for the Plaintiff, Karel Spikes, in the instant action and am admitted to practice in all courts of this state and the United States District Court, Southern District, Central District, Eastern District and Northern District of California. I have personal knowledge of the following facts and, if called as a witness, could and would testify to the following:

2. Attached hereto collectively as Exhibit "4" are true and correct copies of the substantive content of correspondence to and from various defense counsel regarding the failure of various defendants to comply with accessibility modifications required by Settlement Agreements in cases filed by Karel Spikes.

1 3. It is my understanding that Karel Spikes re-visited and re-visits virtually
2 every facility that he has sued in order to compel compliance with the ADA and/or as a
3 customer or client. When he finds that a facility has not complied with the Settlement
4 Agreement entered into in a particular case, he contacts me and requests that I take further
5 action to compel accessibility. In addition to the attached letters that I sent on Mr.
6 Spikes' behalf, I also sent emails and made telephone calls to defense counsel in some of
7 Mr. Spikes' cases, although I do not have written records of those emails and telephone
8 calls. Earlier in my practice in this area of law, I made a few "courtesy calls" to defense
9 counsel in which I advised that their clients had not completed the modifications required
10 by our Settlement Agreements and I did not memorialize those calls with letters. Also, I
11 changed computers and I no longer have "Sent" emails from before 2004. To the best of
12 my recollection, there were approximately 3 or 4 other cases filed by Mr. Spikes in which
13 I made efforts following settlement to compel removal of architectural barriers, that were
14 not memorialized in writing. While I recall other efforts, I cannot recall the specific cases
15 in which the post-settlement efforts were made. Each of these efforts were made
16 following notification by Mr. Spikes that architectural barriers continued to exist post-
17 settlement.

18 4. Exhibit 4, page 21 accurately reflects the content of a letter I sent to Mr.
19 Zuffoletto on July 12, 2006. I only recently located this letter on my computer and have
20 been unable to retrieve my copy of the actual letter from the storage facility. I sent this
21 letter to Mr. Zuffoletto in the Spikes v. Western Towing case (USDC No. 04cv0612 L
22 (POR) because I had been advised by Mr. Spikes that he had re-visited the facility post-
23 settlement and the modifications had not yet been performed. (In that case, Mr. Spikes'
24 claim arose because his vehicle had been towed to Western Towing and, among other
25 problems, Western Towing had no accessible parking space when he tried to retrieve his
26 vehicle.) After receiving Mr. Spikes' telephone call, I happened to visit the facility and I
27 confirmed Mr. Spikes' findings. The Defendant had not actually breached the Settlement
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1 Agreement, however, because we had agreed to a longer period for the modifications,
2 with the Magistrate Judge's assistance. The Defendant had obtained drawings from an
3 architect of various accessibility options, which were attached to the Settlement
4 Agreement. The Defendant needed to obtain building department approval, thus the need
5 for a longer compliance period. Following the date for completion of the modifications,
6 Mr. Spikes and I both confirmed that the modifications had been completed.

7 5. The defendant in Spikes v. Country Time Inc. dba Duke's Liquor, USDC
8 No. 03cv1869 L (LSP), despite my strong suggestion otherwise, declined to retain an
9 attorney to represent him because of limited funds. The matter was settled and Mr.
10 Spikes agreed to resolve the case in exchange for the defendant's promise to install an
11 accessible parking space, a commitment that Defendant would ensure the facility's
12 interior aisles were accessible, and a sum of \$1,275.00 for damages, fees and costs. (See
13 Plaintiff's Exhibit 1, pages 7 to 9.) I later provided the Defendant with copies of the
14 pertinent regulations to assist him in ensuring that the work performed by his contractor
15 was appropriate. At that time, the access consultant agreed to waive his fees and the
16 filing fees were only \$150.00. Mr. Spikes later confirmed the modifications were
17 completed.

18 6. Mr. Spikes settled another case in which the defendant declined to retain an
19 attorney because of limited funds. In that case, the settlement amount was confidential,
20 but the Plaintiff agreed to completely waive his claim for damages and attorney's fees.
21 The only amount recovered was a sum less than \$1,000.00 to cover costs actually incurred
22 by the Plaintiff. In every case, the Plaintiff incurs filing fees, service fees and expert fees,
23 which, for the last several years, are paid to the expert following receipt of the expert's
24 report and prior to the filing of the lawsuit. In this case, the Defendant agreed to install
25 an accessible parking space, modify the slope of a ramp and provide an accessible
26 auxiliary counter.

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1 7. In a confidential settlement in another case, the Defendant had been sued
2 previously by another plaintiff, represented by a different attorney. The earlier matter
3 was settled, unbeknownst to Mr. Spikes, obviously, and the Defendant agreed to make
4 modifications, but they had not been performed at the time of Mr. Spikes' visit. Further,
5 the modifications I observed at the site meeting required by the Court were insufficient.
6 Mr. Spikes requested, and the Defendant agreed to make, additional modifications at the
7 property, in addition to those performed pursuant to the earlier settlement agreement with
8 the other plaintiff. In exchange, Mr. Spikes completely waived his claim for damages,
9 fees and costs and received no monetary recovery in that case.

10 8. Attached hereto as Exhibit "5" is a true and correct copy of my letter to
11 defense counsel Spencer C. Skeen. In Spikes v. Robertos, USDC No. 05cv1088, the
12 Defendant insisted on a settlement that allowed it to make "readily achievable"
13 modifications, without specifying the nature of the modifications. My letter set forth Mr.
14 Spikes' position that, unless the agreed-upon modifications were specific and were
15 completed within a reasonable time frame, the matter would not settle, regardless of the
16 monetary amount of the settlement offer. It has always been the position of my clients
17 and, understandably, my practice, that architectural barrier removal is required as a
18 material term of any settlement agreement. The only exceptions were if the barriers had
19 already been removed during the course of the litigation, or if the business planned to
20 close. In those few instances, the Defendants were asked to agree that if another business
21 opened at the site, or if the closing business re-opened, that it would be accessible to
22 people with disabilities prior to conducting business.

23 9. On several occasions I have rejected cases presented to me by my clients,
24 including Mr. Spikes, because my consultants inspected the facilities and confirmed that
25 modifications were made between the time of the clients' visit and the inspection by the
26 consultants. In those instances, I advise my clients that they may still have claims for
27 damages, but that I will not represent them in those cases. None of my clients has ever
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1 asked me to pursue a claim for damages only. In only a few cases have Defendants
2 claimed that barriers were removed prior to the filing of the lawsuit. In those cases,
3 however, the barriers existed at the time of my client's visit and at the later inspection by
4 the consultant and were only removed shortly before the lawsuit was filed and without my
5 knowledge.

6 10. Attached hereto as Exhibit "6" is a true and correct copy of my letter to
7 another attorney in which I provided copies of relevant accessibility documents. I
8 provided these documents in an effort to disseminate information about accessibility laws
9 and tax credits available to businesses, to encourage businesses to comply with access
10 laws.

11 11. Attached hereto as Exhibit "7" is a true and correct copy of a Certificate of
12 Attendance for Credit for a seminar on the Americans with Disabilities Act that I was
13 asked to conduct for the Ventura County Bar Association in Ventura, California on June
14 12, 2007. Although I was asked to individually conduct the seminar, I suggested that a
15 defense attorney be included as a presenter to ensure that the defense perspective was
16 properly addressed. I prepared the outline and materials for the seminar.

17 12. Attached hereto as Exhibit "8" is a true and correct copy of a page on the
18 San Diego Chamber of Commerce website, advertising an ADA Compliance Seminar, for
19 which I had agreed to serve as a panelist. In about July of 2006, I was advised that the
20 Seminar was being "postponed" because of lack of interest, given that only three
21 Chamber members signed up for the Seminar. On March 20, 2008, I was again contacted
22 by the Chamber and was asked to serve as a presenter for another ADA seminar. I was
23 advised that I was the only panelist from the original seminar who had been asked to
24 participate in the second seminar. Neither a representative from the disabled community
25 nor from the Building Department had been asked to participate in the second seminar. I
26 advised Doug Metz, representative for the Chamber, that I would likely not participate
27 unless a Building Official and a member of the disabled community were invited to
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1 participate, since it is my opinion that these viewpoints are critical to a full understanding
2 and appreciation of accessibility laws and regulations.

3 13. I am deeply committed to the enforcement of the ADA and the removal of
4 architectural barriers. At least one Court has recognized that commitment. Attached
5 hereto as Exhibit "9" is a true and correct copy of an Order Discharging Order to Show
6 Cause entered in Molski v. Sport Chalet USDC No. CV 04-0358 ER, in which Judge
7 Rafeedie, who had declared Mr. Molski a "vexatious litigant" in a case in which Mr.
8 Molski was represented by another attorney, found that Mr. Molski had standing to
9 pursue his claims in the Sport Chalet case in which I represented Mr. Molski. The Court
10 held "This case, filed in San Diego in 2003 by a different attorney who appears actively to
11 pursue remedial measures in addition to monetary damages, does not appear to be part of
12 the same abusive pattern.... and this lawyer appears to be pursuing remedial measures as
13 part of the resolution of this case."

14 14. I have conducted disability law seminars since 1996. I was primarily
15 responsible for the preparation, coordination and presentation of seminars at each of the
16 Annual Meetings for the State Bar of California from 1996 to 2001, as well as at the
17 Semi-Annual State Bar Meeting in San Francisco on April 1, 2000. In the past, I have
18 made presentations to members of the Regional Center of San Diego, the Equal
19 Employment Opportunity Commission and other disability-related organizations.

20 15. I was a member of the State Bar of California's Standing Committee on
21 Legal Professionals with Disabilities ("CLPD") from 1996 to 2001. I served as Vice
22 Chair of that Committee from 1997 to 2000. I was appointed Chair of the Committee for
23 the 2000-2001 term. I also served as the liaison for CLPD to the California State Judicial
24 Committee for the 1997 term. As a member of CLPD, I coordinated and conducted a
25 disability rights seminar in conjunction with the San Diego County Bar Association.

26 I declare under penalty of perjury under the laws of the State of California and the
27 United States of America that the foregoing is true and correct to the best of my
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1 knowledge.

2 Respectfully submitted:

3 Executed this 1st day of April, 2008 at San Diego, California.

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5 /S AMY B. VANDEVELD

6 Attorney for Plaintiff

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